

PRE-APPEAL BRIEF REQUEST FOR REVIEW		Docket Number (Optional) P205/US	
I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to "Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450" [37 CFR 1.8(a)] On _____ Signature _____ Typed or printed name _____	Application Number 09/625,398		Filed 07-26-2000
	First Named Inventor Eric Anderson		
	Art Unit 2164	Examiner Mellissa M. Chojnacki	
<p>Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.</p> <p>This request is being filed with a notice of appeal.</p> <p>The review is requested for the reason(s) stated on the attached sheet(s). Note: No more than five (5) pages may be provided.</p> <p>I am the <input type="checkbox"/> applicant/inventor. <input type="checkbox"/> assignee of record of the entire interest. See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96) <input checked="" type="checkbox"/> attorney or agent of record. Registration number <u>52,809</u>. <input type="checkbox"/> attorney or agent acting under 37 CFR 1.34. Registration number if acting under 37 CFR 1.34 _____</p> <p>_____ /John A. Demos/ Signature</p> <p>_____ John A. Demos Typed or printed name</p> <p>_____ 919-233-1942 x-219 Telephone number</p> <p>_____ October 22, 2008 Date</p> <p>NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below*.</p>			
<input checked="" type="checkbox"/> *Total of 1 forms are submitted.			

This collection of information is required by 35 U.S.C. 132. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11, 1.14 and 41.6. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450. If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.

PRE-APPEAL BRIEF REQUEST FOR REVIEW

Mail Stop AF
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Applicants request review of the final rejection of claims 1-10 and 12-40 in the subject application. No amendments are being filed with this Request.

This Request is being filed with a Notice of Appeal.

Background

Claims 1-10 and 12-40 are pending in the present application, of which claims 1, 10, 23 and 34-35 are presented in independent form. Claims 1-10 and 12-40 stand finally rejected. Claims 1-10, and 12-40 stand rejected under 35 U.S.C. 102(e) as being anticipated by Anderson et al. (U.S. Patent No. 6,567,122 B1).

Reasons for Request

The record fails to establish a proper rejection under 35 U.S.C. § 102 in that the Office fails to provide a single reference that discloses each and every feature of the claimed invention.

To support a rejection under 35 U.S.C. § 102, each and every feature of the claimed invention must be shown in a single prior art document. In re Paulsen, 30 F.3d 1475 (Fed. Cir. 1994); In re Robertson, 169 F.3d 743 (Fed. Cir. 1999). Further, as the Federal Circuit recently stated in Net Moneyin, Inc., v. Verisign, Inc. (Fed. Cir. 2008), a proper anticipation rejection under 35 U.S.C. § 102 requires more than the disclosure of each element in a cited reference. In order to anticipate under 35 U.S.C. § 102, a reference must not only disclose all elements of the claim within the four corners of the document, but must also disclose those elements arranged or combined in the same way as recited in the claim. The prior art reference must clearly and unequivocally disclose the claimed invention or direct those skilled in the art to the invention without need for picking, choosing, and combining various disclosures not directly related to each other by the teachings of the cited reference.

Anderson fails to disclose several recitations of the instant claims, as described below. Further, even assuming, which applicant denies, the sections of Anderson cited by the Office teach the elements of the instant claims, Anderson fails to disclose those elements arranged or combined in the same way as recited in the claim.

1. The Office has failed to address various recited features in its rejections of the independent claims.

First, the Office fails to address the feature of “a method for providing access to respective entity-specific photo-sharing websites for a plurality of entities, each entity controlling a set of entity-specific network-enabled image capture devices.” The Office contends that Anderson this recitation in the sections found in the Abstract; page 20, lines 23-27, page 21, lines 1-4; and on page 26, lines 6-15. The Office further contends that “Anderson discloses allows the user or other users to access the images via the internet by a device ID (See column 5, lines 47-55; column 6, lines 8-19...also see column 8, lines 56-67; column 9, lines 30-50).”

There is no disclosure in any of the cited portions of Anderson to a photo-sharing website at all much less to entity-specific photo-sharing websites for a plurality of entities as recited in the independent claims. It is clear from the Abstract that Anderson is directed to a method and system for providing access to a digital image capture unit via an ID server. In Anderson, a web browser can be used to directly access the image capture unit to access the stored images within the image capture unit.

None of the cited sections of Anderson disclose a photo-sharing site as recited in the instant claims. As defined on page 2 lines 5-8 of the instant application, a photo-sharing website allows “users to store their imagesonce posted on a photo-sharing website, others may view the images over the Internet.” In pointing to this section of the specification, Applicant is not attempting to improperly read limitations from the Specification into the claim. Rather, Applicant is merely pointing to a definition of a term (photo-sharing website) found in the claim. The claim must be interpreted in a manner consistent with the Specification as required by the MPEP.

As stated above, Anderson is directed to allowing access to a digital camera via a website. The images in Anderson are stored on the image capture unit and accessed from that location. The abstract clearly states “The web page provides access to the stored images within the image capture unit.” There is no mention of storing images anywhere other than on the camera. The Office further makes the conclusory statement that “It can also be inherent that the photos are stored on the “Web page” because otherwise the user’s friends or relatives could not view them.” This conclusory statement is simply false. In Anderson, the images that are stored on the camera can be viewed through the functions provided by the web server hosted on the camera without storing the pictures on the web page.

As such, Anderson cannot be said to disclose or suggest a photo-sharing website or service in any manner. Accordingly, since Anderson fails to disclose each and every feature of the claimed invention for at least the above reasons, the Office has failed to make a proper rejection of the independent claims under 35 USC 102.

Second, the Office has failed to address the recited feature of a “providing an online photo-sharing service configured to provide access to the respective entity-specific photo-sharing websites for each of the entities, wherein one or more of the entity-specific photo-sharing websites is customized in appearance to a corresponding one or more of the plurality of entities.” The Office contends that Anderson teaches “providing an online photo-sharing service configured to provide access to the respective entity-specific photo-sharing websites for each of the entities, wherein one or more of the entity-specific photo-sharing websites is customized in appearance to a corresponding one or more of the plurality of entities (See page 29, lines 12-27; page 30, lines 1-11; page 33, lines 6-21)” as recited in the independent claims.

The cited sections are directed to web pages that are provided by each individual camera, not by an online photo-sharing service as recited by the independent claims. The only server described in these sections is the ID server. The ID server is simply not a photo-sharing service as defined in the instant application. The ID server, as described above, maps an ID of an image capture unit to an Internet address. The ID server then performs a lookup function to locate the image capture unit. There is no discussion of the ID server storing images as a photo-sharing service must do. Accordingly, the ID server cannot be said to disclose a photo-sharing service as recited in the independent claims.

Further, Anderson does not disclose customizing the appearance of an entity specific website at all. The Office states it is interpreting this recitation vaguely. Even with the vaguest possible interpretation, the cited sections of Anderson fail to disclose or even suggest a website that is “customized in appearance.” For example, the cited sections describe web pages that are served by the cameras themselves (rather than by a photo-sharing service) that include objects such as control buttons, data entry fields, drop down menus, etc. for interaction with the user. There is no discussion of these objects being customized in any manner, much less customized in appearance to a corresponding one or more of the plurality of entities. Accordingly, since Anderson fails to disclose each and every feature of the claimed invention for this reason as well, the independent claims are not anticipated by Anderson.

Third, the Office has failed to address the recited feature of a “that causes the entity-specific network-enabled image capture devices to wirelessly transmit entity ID information when the entity-specific network-enabled image capture devices wirelessly transmit images to the photo-sharing service over the internet connection.” The Office contends that Anderson teaches “that causes the entity-specific network-enabled image capture devices to wirelessly transmit entity ID information when the entity-specific network-enabled image capture devices wirelessly transmit images to the photo-sharing service over the internet connection (See page 20, lines 23-27, page 21, lines 1-4; page

26, lines 6-15)" as recited in the independent claims. As described above, the ID server never receives images from the image capture device in Anderson. There is no description of the ID server receiving anything other than ID's and lookup/registration requests. The only access to images that occurs in Anderson is through direct access to the camera via a webpage provided by the camera. No photo-sharing service is described at all, much less one that receives images. Accordingly, Anderson cannot be said to disclose or suggest "image capture devices wirelessly transmit images to the photo-sharing service" as recited in the independent claims.

Further, the Office responds to Applicant's arguments by stating "the arguments have been fully considered but are not found to be persuasive, because Anderson et al. discloses user sharing." Simply making the conclusory statement that Anderson discloses user sharing is not sufficient to establish a case for anticipation for "that causes the entity-specific network-enabled image capture devices to wirelessly transmit entity ID information when the entity-specific network-enabled image capture devices wirelessly transmit images to the photo-sharing service over the internet connection."

Further, the Office asserts that Anderson discloses "wherein when the entity-specific network-enabled image capture devices wirelessly connect to the photo-sharing service via the wireless internet connection, the photosharing service uses the entity ID received from the entity-specific network-enabled image capture devices to automatically associate the images received from the entity specific network-enabled image capture devices with the photo-sharing website of the identified entity (See page 20, lines 23-27; page 21, lines 1-4, page 22, lines 4-15; page 26, lines 16-27; page 27, lines 1-16)" as recited in the independent claims. The Office appears to rely on the section found on page 22, lines 4-15 as anticipating the above referenced recitation.

From the section cited above, it appears that the Office is now reading the web server application of Anderson as anticipating the photo-sharing service. Applicant respectfully disagrees. The cited section clearly states that the web server application is hosted by the camera. The claim recites the image capture device wirelessly connects to the photo-sharing service. Applicant respectfully asserts that a web server application hosted on a camera would not be wirelessly accessed by the camera. Such an operation is not only not disclosed in Anderson, but would simply make no sense. As such, the web server application disclosed in Anderson cannot be said to disclose a photo-sharing service as recited in the independent claims.

2. The record fails to establish a proper rejection under 35 USC 102 in that even assuming, which applicant denies, the teachings of Anderson cited by the Office teach the elements of the instant claims, Anderson fails to disclose those elements arranged or combined in the same way as recited in the claim.

The Office relies on disparate disclosures and sections of Anderson as anticipating the instant claims. For example, the Office alternates between citing the ID server disclosed in Anderson and the Web server disclosed in Anderson in making the case for anticipation. As stated above, the Office relies on the web server application of Anderson as anticipating the photo-sharing service recited in the independent claims for a particular recitation and the ID server of Anderson used for the other recitations of the independent claims.

As stated above, the Federal Circuit has made clear that “the prior art reference must clearly and unequivocally disclose the claimed invention or direct those skilled in the art to the invention without need for picking, choosing, and combining various disclosures not directly related to each other by the teachings of the cited reference.” The Office cannot rely on two different servers (the ID server and the web server, respectively), providing two different services (checking ID and providing access to the camera, respectively) and located in two different locations (remote and hosted on the camera, respectively) as anticipating the photo-sharing service of the independent claims.

Summary

Accordingly, since the Office has failed to provide a reference that discloses each and every feature of the claimed invention for at least the above reasons, the independent claims are considered novel and inventive. Further claims 2-9, 12-22, 24-33, and 36-40 are considered novel and inventive for at least the same reasons.

Respectfully submitted,

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